

**Before the
Federal Communications Commission
Washington, DC**

In the Matter of:)	
)	
Request for Review by)	
)	FCC Form 471 No. 294836
Beaufort County School District)	FRN No. 834456
Beaufort, South Carolina)	
)	
)	
)	
Federal-State Joint Board on)	CC Docket No. 02-6
Universal Service)	

**Request for Review of Fund Administrator’s Adjustment of Eligible Service Start Date and
Application of the Form 486 Submission Deadline**

The Beaufort County School District (“the school district”) hereby appeals the March 30, 2004 decision of the fund administrator to revise the permissible Service Start Date for the above-referenced FRN. The school district contends that this amounts to a too-rigid interpretation of the Commission’s rules regarding the application of the Form 486 submission deadline and, in effect, penalizes the district for the care it took to ensure that its use of this funding request would meet all of the Schools and Libraries Program’s regulations.

Summary of Facts

In January 2002, the school district submitted the above-referenced funding request to cover labor costs associated with potential moves, adds, and changes on the eligible portion of telecommunications systems installed at six schools that were eligible for a 90 percent discount

rate. The service provider specified on the application was Avaya Inc. Over the course of the next year, however, the school district found it necessary to switch service providers. Because the Schools and Libraries Division will not permit Operational SPIN Changes until a funding commitment decision letter has been issued, the school district had no choice but to wait until it received a funding commitment letter to proceed with the SPIN change.

On January 13, 2003, the school district engaged its new vendor, Converged Networks, to perform work on the PBX at its Whale Branch campus, which comprises two of the schools covered by this funding request.¹ On January 27, 2003, the school district finally received the funding commitment letter that covered the bulk of its internal connections projects for the 2002 funding year.²

The instructions for the Form 486 stipulate that the purpose of the form is, among other things, “to authorize the payment of invoices from your service provider.” It’s worth noting that the Minimum Processing Standards for submitting the form require a funding request number and service start date, but do not require the designation of a Service Provider. In other words, if the district had proceeded to submit a Form 486 for this funding request, it would have authorized the disbursement of Universal Service Funds to a service provider other than the one that had provided services.

The Office of Management and Budget-approved Form 486 instructions that accompanied the form at the time (the September 2002 version) did not (and still do not, even with the August 2003 revision) provide any instructions related to a situation in which the school district is required to seek a SPIN change. In addition, at the time the school district’s funding request was approved and the services started, there apparently was no guidance on the SLD’s Web site related to this issue. Because the original purpose of the Form 486 was to signify that services had started so that the correct vendor could be paid, the presumption would be that a Form 486 should not be submitted until this matter was straightened out.

¹ Before making this change, the school district determined that it would be able to make all of the certifications that are required for an Operational SPIN change to be approved.

² It should be noted that this letter arrived one day before the invoicing deadline for a 1999 funding request, for which the district had to seek a waiver because of SLD processing errors, which was subsequently granted. It also arrived one week before the deadline for Form 471 applications for 2003.

Because this funding request was designed to cover a level of eligible work that could not be precisely determined in advance, the school district reviewed its invoices later in the spring to determine which included the kinds of labor charges that could qualify for funding under this approved request. Improvements had already been made to the PBX at Whale Branch and thus, the district believed that the labor portion of that work could qualify for support under this funding request. Because the work involved a software upgrade to facilitate Voice Over IP technology, the district felt it was prudent to submit a Service Substitution request. Although it was confident that the work was eligible, it recognized that eligibility issues had been raised concerning Voice Over IP services and wanted to ensure that an auditor would not challenge this item at a future date. Because the district had to submit a request for an Operational SPIN Change anyway, it made sense to request a Service Substitution at the same time.

This letter was submitted on July 21, 2003, well before the applicable deadline for the use of the funding request and seven months before the only apparent deadline for filing a SPIN change request, namely the invoicing deadline, or in this case, January 28, 2004. Naturally, the school district would have preferred to seek the SPIN Change and Service Substitution request before proceeding with the work, but from an operational standpoint, it could not wait until the SLD finally approved the funding request, seven months after the start of the funding year.

Over a period of time, the Service Substitution was reviewed. That department determined that a Service Substitution approval was not needed, and asked the school district to formally “cancel” its Service Substitution request. That request was submitted on January 23, 2004.

On February 9, 2004, the district’s E-rate consultant received an email that asked whether the original service provider had provided any services and said the SLD could not process an Operational SPIN Change request that had an effective date that fell in the middle of the month. The district’s SPIN Change request letter had stipulated that January 13, 2003 was the effective date of the change, since that was the date the work was performed. On February 9, 2004, the consultant submitted a revised letter that certified that the original service provider had provided no services. The consultant believed that the issue of the revised effective date of the SPIN change would be moot, but authorized the SLD to adjust that date to January 1, 2003, if that would facilitate the approval.

On February 23, 2004, the district was notified that its SPIN change had been approved. On March 15, 2004, it proceeded to file the Form 486, authorizing the SLD to disburse payments to the correct vendor.

On March 30, 2004, the Form 486 was acknowledged, but the service start date was adjusted to November 16, 2003, which was 120 days before the postmark of the Form 486. When the district proceeded to prepare the BEAR form to be reimbursed for the discounts that it was finally in a position to seek, it realized that the form would be rejected because the Service Start Date had been adjusted forward. The district consulted with top SLD officials and was advised that it would have to appeal this determination to the Commission.

Discussion

In this case, the district was penalized for carefully seeking approval at each step of the way while running afoul of too-rigid rules regarding the deadline for submitting the Form 486.³

Thus, the district found itself in an E-rate “Catch-22”:

- It could not seek a SPIN change or Service Substitution before the start of services because its funding commitment had not yet been approved.
- It could not file a Form 486 because the vendor of record had not performed the services.
- It could not correct the vendor of record until it filed a SPIN Change.
- It could not meet the 120-day deadline for filing a Form 486 when the SPIN change was not approved until more than 120 days later.

Instead, the district has been penalized because it carefully followed the Commission’s procedures for ensuring that Universal Service Funds are not disbursed to the wrong vendor or for potentially ineligible services. It was not permitted to seek these reviews in advance because of the delays in reviewing its application. And it presumed that once its request was under review by the SLD that it would not be subject to a deadline for a form that it could not correctly file until the SLD had reviewed the transactions.

³ The only possible argument for enforcing this deadline is to comply with the Children’s Internet Protection Act. However, CIPA includes no requirement that compliance standards be applied at the level of an individual funding request. This school district has fully complied with CIPA since the law was passed and has made numerous certifications as to its compliance in regard to other funding requests and applications.

It appears that *after* the services were delivered and *after* the school district received its funding request, the SLD modified its Web-based instructions for filing the Form 486 in connection with a Service Substitution or SPIN change. These instructions amount to a somewhat informal process of attaching the Form 486 to the SPIN Change request.

The message implicit in this policy is, “It doesn’t matter what is going on with your project or who is doing it, get that Form 486 filed because if you don’t, you are in jeopardy of losing your discounts if you should happen to miss this constantly evolving deadline.” There is currently no penalty associated with filing a Form 486 early or filing for funding requests that are not ultimately used. Thus, under the Commission’s policy, an applicant is best served by filing a Form 486 for *every* funding request as soon as it is approved because that way it will never run the risk of missing the 120-day deadline because it tried to proceed in an orderly way.

The district believes that an applicant should not be subject to the Form 486 deadline until after a SPIN change or Service Substitution request has been approved by the SLD. To require an applicant to submit a Form 486 for retroactive services before those approvals have been obtained creates the possibility that the wrong vendor will be paid or discounts disbursed for ineligible services. Now that the SLD is reviewing invoices more aggressively, it makes no sense for an applicant that voluntarily submits to these reviews—recognizing that they will delay their disbursements—to be rejected because it did not move forward to authorize a payment to the wrong vendor.

The Form 486 was created as the most basic kind of control against the disbursement of funds when services were not delivered. At a time when the Commission is seeking to address concerns about waste, fraud and abuse, it would be folly to enforce a policy that in effect, weighs an artificial, 120-day deadline for a form ahead of a certification that services have been provided by the correct service provider.

Requested Relief

The Commission should instruct the SLD that, in cases where an applicant needs to submit a SPIN change request for work that has already been performed, that the Form 486 deadline be set at 120 days after the date of approval of the SPIN change request. That will acknowledge that an applicant cannot submit a Form 486 application until the SLD’s records reflect the name of the

correct provider. The district believes that the circumstances of its own case—in which the work had to be performed before its funding request was approved—provide an even more compelling reason for relief in its own case. However, it believes that the Commission should review how the SLD is applying this policy because it, in effect, gives greater weight to the expeditious filing of the form that triggers payments than to the processes designed to ensure that funds are used appropriately.

In this case, the district submitted its Form 486 expeditiously—within approximately three weeks—of when the SPIN change was approved.

The district asks the Commission to instruct the SLD to reset the permissible Service Start Date for this funding request back to January 1, 2003 and clarify that in cases involving SPIN changes, the Form 486 must be submitted within 120 days of the funding commitment letter, the service start date or a SPIN change approval, whichever is later.

If the Commission determines that a waiver of its rules is necessary to provide relief to the school district, then it requests that the Commission consider this appeal to be a waiver request. The circumstances in this case demonstrate that the school district was ultimately penalized for carefully following all of the E-rate program's formal rules for ensuring that discounts are distributed to the correct vendor and only for eligible services.

By: _____

Sara Fitzgerald
Vice President
Funds For Learning, LLC
703-351-5070

On behalf of: Beaufort County School District
P.O. Drawer 309
Beaufort, SC 29901
cc: Anne Carver

April 23, 2004